

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals with)	
Hearing and Speech Disabilities)	
)	
Structure and Practices of the Video Relay)	CG Docket No. 10-51
Service Program)	

COMMENTS OF SPRINT CORPORATION

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Sprint Corporation (“Sprint”) hereby files comments in response to the recent Public Notice seeking comment on Rolka Loube Associates LLC’s (“Rolka Loube’s”) proposed provider compensation rates for various forms of telecommunications relay services (“TRS”).¹

I. INTRODUCTION AND SUMMARY

For the reasons set forth below, Sprint again urges the Federal Communications Commission (“FCC” or “Commission”)² to continue determining the rate for Internet Protocol Captioned Telephone Service (“IP CTS”) using the Multistate Average Rate Structure (“MARS”) methodology. Accordingly, the FCC should adopt the proposed MARS-based rate of \$1.9467 for IP CTS. While the *Public Notice* contains Rolka Loube’s calculations for a

¹ *Rolka Loube Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services Fund for the 2017-2018 Fund Year*, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 17-445 (rel. May 10, 2017) (“*Public Notice*”).

² For purposes of these comments, references to the Commission are meant to encompass both actions taken by the full Commission and actions that the Consumer and Governmental Affairs Bureau may take based on its delegated authority.

number of alternative rate methodologies for IP CTS,³ adoption of a new methodology unquestionably would not reflect the *true* costs of providing IP CTS service. In addition, the Commission lacks the legal foundation to adopt a new rate methodology at this time, rendering any departure from MARS premature, arbitrary, and capricious.

With respect to IP Relay, Sprint supports the proposed rate of \$1.3350 per minute.⁴ Nevertheless, Sprint continues to urge the Commission to consider long term measures that will ensure that IP Relay is a sustainable offering. As Sprint has emphasized, the company simply cannot, as a business matter, operate its IP Relay service as a non-profit entity.

II. THE COMMISSION SHOULD ADOPT THE PROPOSED MARS-BASED RATE FOR IP CTS

Sprint consistently has supported the use of the MARS methodology to set the rates for IP CTS and other forms of TRS.⁵ As explained below, the Commission must continue to use the same methodology to set the compensation rates for interstate and intrastate IP CTS for the 2017-18 fund year. Rolka Loube's proposed rate of \$1.9467, therefore, should be adopted for the funding year that commences on July 1, 2017.

A. MARS Is Superior to Other Rate-Making Methodologies

The MARS methodology is the only rate-making mechanism that relies on the competitive marketplace to set rates. By relying on the rates set through competitive bidding, MARS results in the "lowest price consistent with recouping providers' costs for provisioning

³ *Public Notice* at 1-2.

⁴ *Id.* at 3.

⁵ *See, e.g.*, Reply Comments of Sprint Corporation at 2-4 (Dec. 4, 2013); Comments of Sprint Corporation at 1-2 (June 4, 2015). (Unless otherwise indicated, all comments and *ex parte* presentations cited herein were made in CG Docket No. 03-123.)

the service,” because “there is no incentive for providers to overestimate costs.”⁶ As the Commission explicitly has acknowledged, the use of MARS “produces a rate that better approximates providers’ reasonable costs, and therefore promotes the efficient recovery of all costs.”⁷

The Commission also has observed that “the MARS plan eliminates the costs, burdens, and uncertainties associated with evaluating, correcting, and re-evaluating provider data.”⁸ Notably, MARS is self-adjusting – “[a]s the cost of providing IP CTS changes due to changes in technology, regulatory requirements or labor costs, these changes automatically are reflected in the MARS rate.”⁹ The MARS methodology thereby obviates the need for the Commission to address the “complexities inherent in rate-of-return or price-cap rulemaking while relying on providers’ strong incentives to estimate their costs accurately in the competitive bidding process.”¹⁰

⁶ Comments of Hamilton Relay, Inc. at 4 (June 4, 2015).

⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, ¶ 18 (2007) (“2007 Order”); see also *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges*, First Report and Order, 12 FCC Rcd 15982, ¶ 289 (1997) (“rate regulation can only be, at best, an imperfect substitute for market forces”); Letter from John T. Nakahata, Counsel for CaptionCall, LLC, to Marlene H. Dortch, FCC Secretary, at 1 (Jan. 27, 2016) (“Market-based rates ensure that providers, who must constantly adapt to competitive pressures, operate their services in the most efficient manner possible, without eliminating costs necessary for providers to offer essential elements of TRS.”) (“CaptionCall *Ex Parte*”); Reply Comments of Ultratec, Inc. at 3 (June 11, 2015) (“MARS accurately reflects the actual cost of provisioning IP CTS under competitive market conditions because MARS relies on the competitive bids of providers rather than projected costs, which may be subject to manipulation and gaming.”) (“Ultratec Reply Comments”); Comments of Hamilton Relay, Inc. at 1-2 (Nov. 4, 2013) (“The MARS methodology is superior to its alternatives chiefly because it relies on the competitive market, rather than prescriptive regulation and proxies, to set rates.”) (“Hamilton 2013 Comments”).

⁸ 2007 Order ¶ 18.

⁹ Ultratec Reply Comments at 3.

¹⁰ Hamilton 2013 Comments at 2.

Importantly, the Commission’s reliance on the MARS methodology has led to the adoption of rates that do not fluctuate wildly from year to year. As Hamilton previously has shown, the annual increase in the MARS-based rates for IP CTS over the past decade has essentially matched the increase in the Consumer Price Index for the same period.¹¹ This trend continues for the 2017-18 funding year. The proposed MARS-based compensation rate represents an increase of approximately 2.15 percent over last year’s rate, while the Consumer Price Index for the 12 months ending on April 30, 2017 rose 2.2 percent.¹²

These “predictable, fair, and reasonable rates” have created a measure of certainty for IP CTS providers.¹³ In turn, this certainty has led to ongoing investment and innovation in the IP CTS marketplace, ensuring that IP CTS users continue to have access to a communications option that is “functionally equivalent” to the continually updated communications available to other users. As a result, CaptionCall correctly noted that “adopting market-based rates is the best mechanism for the Commission to ensure that TRS providers fulfill the ADA’s mandate that all deaf and hard-of-hearing Americans gain access to functionally equivalent telephone services.”¹⁴

B. The Commission Should Not Adopt Any of the Alternative Rate-Making Mechanisms Listed in the Public Notice at This Time

The *Public Notice* properly does not seek comment on various other rate-making methodologies suggested by Rolka Loubé to set IP CTS rates. As shown above, the MARS-

¹¹ Comments of Hamilton Relay, Inc. at 5-6 (May 24, 2016) (“Hamilton 2016 Comments”); *see also* Ultratec Reply Comments at 3 (“MARS-calculated IP CTS rates have proven to be predictable and stable over time.”).

¹² *See* Bureau of Labor Statistics, Economic Releases, *Consumer Price Index Summary*, USDL-17-0593 (May. 12, 2017), <https://www.bls.gov/news.release/pdf/cpi.pdf>.

¹³ 2007 Order ¶ 16; *see also* Hamilton 2016 Comments at 11 (“MARS has been so successful as a rate methodology in part because of the regulatory certainty it has provided over time.”).

¹⁴ CaptionCall *Ex Parte* at 1.

based mechanism is the only methodology that is based on market prices for IP CTS, and experience over many years demonstrates that MARS results in stable, predictable prices that reasonably compensate providers for the costs they incur in furnishing IP CTS. Many of the alternatives Rolka Loube raises suffer from “irreparable flaws, mainly because they artificially attempt to mimic the results of competition, whereas MARS is fundamentally based on them.”¹⁵

The so-called “cost-based” methodologies are particularly ill-suited to setting IP CTS rates. Rolka Loube claims that “[r]etaining the current MARS rate-making procedure is not recommended because it will provide excessive industry profits,” primarily based on its internal analysis of the costs of providing IP CTS using the data it has collected.¹⁶ Sprint contends, however, that the cost categories for which Rolka Loube collects data may be incomplete and do not provide an apples-to-apples comparison between providers. Moreover, costs cannot be disassociated from quality of service. Stated differently, the costs as reported to Rolka Loube are ill-defined and do not necessarily represent the true costs to provide the same service at the same service quality levels. As a result, it plainly would be unreasonable for the Commission to set a “cost-based” compensation rate for IP CTS that does not account for the true costs of providing “functionally equivalent” service.

It is important to remember that the Commission’s use of non-market-based methodologies to determine compensation rates for other TRS offerings has led to serious rate churn problems that adversely affected both providers and the consumers that rely on their services. Perhaps most notably, the Commission reset the IP Relay base rate based on an

¹⁵ Hamilton 2016 Comments at 3.

¹⁶ Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, Rolka Loube Associates LLC, at 19 (Apr. 28, 2017).

“allowable cost” calculation in 2013.¹⁷ Since this rate structure was adopted, every company other than Sprint stopped providing IP Relay, at least in part because they found that it was not financially viable to remain in the marketplace. For example, when Sorenson announced its plans to exit the IP Relay business, it expressly stated that its decision was based on the fact that the rates the FCC adopted “are simply too low to sustain a high quality service” and “will not yield functionally-equivalent telecommunications relay service.”¹⁸

The IP CTS rate would be subject to similar “unpredictable fluctuations” should rates be based on providers’ projected “costs.” For example, Hamilton notes that Rolka Loube’s projected “costs” for IP CTS have varied from \$1.4826 to \$3.35 per minute in a mere three-year period.¹⁹ These variations lead to marketplace uncertainty, which dampens incentives to maintain high-quality service, much less innovate. As a result, assuming that carriers would continue to offer IP CTS under a cost-based methodology, service quality and competition inevitably will decline – ultimately harming the consumers that depend on this important service.²⁰

¹⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service*, Order, 28 FCC Rcd 9219, ¶¶ 10-20 (2013).

¹⁸ Letter from John T. Nakahata, Sorenson Communications, Inc., to Marlene H. Dortch, FCC Secretary (July 8, 2013). *See also* Comments in Support of Sprint’s Petition for Reconsideration of Telecommunications for the Deaf and Hard of Hearing, National Association of the Deaf, Association of Late-Deafened Adults, Inc., Deaf and Hard of Hearing Consumer Advocacy Network, Cerebral Palsy and Deaf Organization, and California Coalition of Agencies Serving the Deaf and Hard of Hearing, at 4 (Dec. 5, 2013) (“There is strong evidence that the Commission’s decision to reduce immediately IP Relay rates by nearly 20%, and to mandate further annual six percent reductions for the next two years, has had a dramatic and negative impact on the ability of deaf and hard of hearing consumers to have a choice of multiple providers from which they can obtain high-quality IP Relay services.”); *id.* at 5 (“There is enough evidence in the record for the Commission to conclude that the drastic reduction in IP Relay service providers is the direct result of an unrealistically low reimbursement rate.”).

¹⁹ Hamilton 2016 Comments at 10.

²⁰ Sorenson Communications, Inc. Comments on Rolka Loube Payment Formulas and Funding Requirements at 8 (May 24, 2016) (“Should the Commission adopt such an ‘allowable

In short, many of the alternative mechanisms Rolka Loube proposes for setting IP CTS compensation rates are clearly far more problematic and lead to far less predictable results than the proven MARS methodology. Accordingly, the Commission should reject any plan to depart from MARS-based rates at this time.²¹

C. A Decision to Change the Methodology Used to Calculate IP CTS Rates Would be Premature, Arbitrary, and Capricious

For the reasons set forth above, there simply is no reason to develop other rate methodologies that can do no better than artificially replicate the market-based rates already established under the MARS plan.²² Even if, *assuming arguendo*, the Commission were interested in replacing the MARS approach with a new methodology, it would be ill-advised to do so at this time. As Hamilton has noted, the Commission “has never abandoned a competitively-based rate methodology in favor of a methodology based on allowed costs.”²³ The Commission thus faces a high burden in justifying a decision to move away from the MARS methodology for setting IP CTS compensation rates, a burden that it cannot meet based on the

cost’ approach, it would result in setting rates below viable levels, leading to the inevitable outcome: providers exiting the service, which will reduce competition and diminish customer choice.”); Letter from Danielle Burt, Counsel for Telecommunications for the Deaf and Hard of Hearing, Inc., to Marlene H. Dortch, FCC Secretary, at 1 (May 18, 2015) (expressing “concerns about the quality of VRS if rate cuts continue and stress[ing] that consumers and interpreters should not have to bear the burden of a rate cut that directly impacts quality.”).

²¹ Should the Commission move forward with an alternative to the MARS-based rate methodology for IP CTS, it should continue to rely on the proposed \$1.9467 rate for the 2017-18 funding year. Any immediate shift from a MARS-based rate inevitably would wreak havoc on the industry. Moreover, any attempt by the Commission to flash-cut to a significantly lower IP CTS rate certainly would be subject to challenges and appeals that should be resolved before the rate is reduced.

²² See, e.g., Comments of Purple Communications, Inc. at 3 (Nov. 4, 2013) (“Purple sees no reason to artificially develop other forms of market-based rates given the effectiveness of the MARS policy.”).

²³ Letter from David A. O’Connor, Counsel for Hamilton Relay, Inc., to Marlene H. Dortch, FCC Secretary, at 1 (Mar. 30, 2017) (“Hamilton *Ex Parte*”).

current record. If the FCC intends to consider the possibility further, it must develop the substantive analysis and factual information that could legally justify such a departure.

As an initial matter, the Commission plainly cannot act based on the *Public Notice* in question, in which it notes that it would be “premature to select one of the specific [IP CTS rate] recommendations” listed therein.²⁴ Indeed, it is the Commission’s longstanding view that “a rulemaking under the Administrative Procedure Act’s provisions for notice and broad public participation,” rather than a Public Notice affording parties a mere two weeks to comment, “assures fairness, the opportunity to develop the record and mature consideration.”²⁵

While the Commission initiated a notice and comment proceeding in 2013 regarding IP CTS,²⁶ the record in that proceeding regarding the merits and potential impact of alternative rate mechanisms for IP CTS does not provide the legal foundation for Commission action. To the contrary, that record is replete with support for continued use of MARS,²⁷ and thus contains little substantive information regarding the specific advantages and disadvantages of alternative methodologies.

Indeed, a decision to supplant the existing, proven methodology with an entirely different mechanism requires a comprehensive, updated record that considers all of the potential benefits

²⁴ *Public Notice* at 2.

²⁵ *Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, ¶ 218 (2002).

²⁶ *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 13420 (2013).

²⁷ *See, e.g.*, Reply Comments of Sprint Corporation at 2-4 (Dec. 4, 2013); Reply Comments of Hamilton Relay, Inc. at 2-9 (Dec. 4, 2013); Comments of Purple Communications, Inc. at 1-3 (Nov. 4, 2013).

and risks of such a dramatic change. The record of the current ongoing proceeding is both stale and inadequate.²⁸ For example, Hamilton notes that the Commission has never resolved which cost categories should be deemed reasonable in providing IP CTS and whether Rolka Loube's data collection accurately reflects all such costs.²⁹ The Commission cannot fully assess the impact of any cost-based methodology, particularly one that relies on Rolka Loube's data, until these matters are resolved. Similarly, Sorenson has raised valid concerns regarding whether the 2013 item provided adequate notice regarding the possibility of adopting tiers for IP CTS rates.³⁰ It is well-established that a notice of proposed rulemaking must "describe the range of alternatives being considered with reasonable specificity," because "if the final rule deviates too sharply from the proposal, affected parties will be deprived of notice and an opportunity to respond to the proposal."³¹

At a minimum, the Commission therefore must seek further comment on the matters that were not raised in 2013 and refresh the record before it makes any decision to abandon the MARS methodology for IP CTS. That process would permit interested parties to develop a comprehensive assessment of the merits of the various alternatives and justify why any are

²⁸ See, e.g., *Southern Louisiana Area Rate Cases v. Federal Power Commission*, 428 F.2d 407, 433 (5th Cir. 1970) (finding "[t]he staleness of the record is a serious problem . . . [in] a case setting rates for a fast-growing, changing industry in a changing economy," when there was only a two-year gap between the decision and the most recent data considered by the Commission).

²⁹ Hamilton 2016 Comments at 7-8 (further noting that the "Administrator's data request forms do not bear an OMB Control Number," which "raises serious questions about any reliance on the data collected in the forms"); Hamilton *Ex Parte* at 1 n.2 ("[T]he Commission has never sought comment on what IP CTS costs may be allowed and what costs may be disallowed under a cost-plus approach.")

³⁰ Letter from John T. Nakahata, Counsel to Sorenson Communications, LLC, to Marlene H. Dortch, FCC Secretary, at 5 (May 4, 2017).

³¹ *Time Warner Cable Inc. v. FCC*, 729 F.3d 137, 169-71 (2d Cir. 2013), citing *National Black Media Coalition v. FCC*, 791 F.2d 1016, 1022 (2d Cir. 1986), and *Prometheus Radio Project v. FCC*, 652 F.3d 431, 450 (3d Cir. 2011) (internal quotation marks omitted).

superior to the market-based MARS approach that has been used successfully for many years. Current providers also could provide information regarding whether they would exit the market if certain new methodologies were adopted.

Rather than such a targeted proceeding, however, it would be more appropriate for the Commission to issue a more comprehensive notice of proposed rulemaking or notice of inquiry that carefully examines IP CTS in a holistic fashion, taking into account all aspects of the service.³² By doing so, the Commission can both more accurately assess the impact that a new rate-setting methodology may have on other aspects of IP CTS and ensure that the IP CTS marketplace is operating efficiently and effectively.

III. THE COMMISSION MUST ADEQUATELY COMPENSATE SPRINT FOR ITS PROVISION OF IP RELAY SERVICES

Sprint long has been a leading provider of IP Relay service and has demonstrated its commitment to providing this important service. Indeed, Sprint is the only remaining provider of this service. When all other IP Relay providers announced their exit from the IP Relay market, Sprint also was developing plans to discontinue its offering. If Sprint were to exit the market, however, the thousands of individuals who rely on IP Relay service as their sole or primary means of communication by telephone – in particular, deaf-blind users – would be irrevocably harmed by the loss of the service. As the Commission has found, the “consequences of Sprint’s termination of IP Relay service would be severe for consumers who are deaf, deaf-blind, hard-of-hearing, or have speech disabilities.”³³ Accordingly, Sprint continues to provide IP Relay,

³² Hamilton 2016 Comments at 12 (“The Commission should focus on implementing the GAO’s recommended performance standards, including compliance measurements for providing IP CTS, prior to adopting any changes to the IP CTS compensation mechanism.”).

³³ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 29 FCC Rcd 16273, ¶ 7 (2014) (further finding that “certain categories of consumers currently rely upon IP Relay service as their sole or primary

despite the fact that the current rate methodology does not adequately compensate the company for its costs.

While Sprint does not specifically object to the \$1.3350 per minute rate that Rolka Loubé proposes for the 2017-18 funding year, Sprint continues to object to the cost-based rate methodology used to set the IP Relay rate. Cost-based rates result in Sprint operating on a razor-thin margin. As an example, if Sprint were to miss the speed-of-answer measurement, it loses an entire day of revenue for services rendered. Sprint simply cannot function as a non-profit business and must be compensated in a manner that allows it to earn a reasonable profit and maintain the quality of its service. The Commission therefore should open a long-overdue proceeding to overhaul the IP Relay system, including by moving away from the current rate-setting methodology to a system that will create a more favorable business environment for the provision of IP Relay service.

Specifically, the Commission should consider using the MARS-based interstate TRS rate as a basis for determining the IP Relay rate. The Commission historically has found the costs of providing IP Relay and traditional TRS to be “generally similar.”³⁴ Notably, for many years, the FCC set the IP Relay rate at the same level as the traditional TRS rate.³⁵ Such an approach was logical, given that the two services offer largely the same functionality, and, in many instances, “the same CAs, sitting at the same offices, handle both traditional and IP Relay calls.”³⁶ Even

means of communicating by telephone, including consumers who are deaf-blind or have speech disabilities, as well as deaf or severely hard-of-hearing consumers who do not know or are not comfortable with the use of American Sign Language”).

³⁴ 2007 Order ¶ 41.

³⁵ *Id.* ¶ 39.

³⁶ *Id.* ¶ 41.

today, Sprint uses the same network, CAs, and equipment to provide IP Relay and traditional TRS.

While Sprint recognizes that there might be some differences between IP Relay and TRS services, there is no plausible basis that would explain the vast gap between the proposed IP Relay rate – \$1.3350 per minute – and the proposed TRS rate of \$2.9186 per minute. As part of this proceeding, the Commission also could consider alternative arrangements, such as a single-provider contractual arrangement, to account for the fact that Sprint is the only remaining IP Relay provider.

IV. CONCLUSION

For the foregoing reasons, Sprint urges the Commission to maintain the current MARS-based methodology to determine the IP CTS rate. In addition, the Commission should restructure IP Relay service in order to ensure the health and longevity of this important service.

Respectfully submitted,

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